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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

MAXUS METROPOLITAN, LLC, )  
 )  
Plaintiff, ) No. 20-cv-00095-FJG  
vs. )  
 )  
TRAVELERS PROPERTY CASUALTY ) July 28, 2023  
COMPANY OF AMERICA, )  
Defendant. )

.....  
TRANSCRIPT OF JURY TRIAL - VOLUME 4 OF 8  
BEFORE THE HONORABLE FERNANDO J. GAITAN, JR.  
UNITED STATES DISTRICT COURT JUDGE

Proceedings recorded by electronic stenography  
Transcript produced by computer

APPEARANCES

For the Plaintiff: MR. MICHAEL J. ABRAMS  
MS. ALANA McMULLIN  
MS. KIMBERLY K. WINTER  
Lathrop GPM LLP  
2345 Grand Avenue, Suite 2200  
Kansas City, Missouri 64108  
  
For the Defendant: MR. BRENNEN G. ELY  
MS. LAUREN A. WIGGINS  
Ely & Isenberg, LLC  
3500 Blue Lake Drive, Suite 345  
Birmingham, Alabama 35243  
  
MR. DANIEL EDWARD HAMANN  
Deacy & Deacy, LLP  
9233 Ward Parkway, Suite 370  
Kansas City, Missouri 64114

Gayle M. Wambolt, RMR, CRR  
U.S. Court Reporter, Room 7552  
Charles Evans Whittaker Courthouse  
400 East Ninth Street  
Kansas City, MO 64106 (816) 512-5641  
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Gayle M. Wambolt, CCR No. 462  
Registered Merit Reporter

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10  
11  
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13  
14  
15  
16  
17  
18  
19  
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21  
22  
23  
24  
25

INDEX  
JURY TRIAL  
JULY 28, 2023

CHRONOLOGICAL INDEX

PLAINTIFF'S WITNESSES:

	<u>DIR</u>	<u>CROSS</u>	<u>RDIR</u>	<u>RCRS</u>
RYAN SNYDER	573	589	605	607

1 FRIDAY, JULY 28, 2023

2 (The following proceedings were had in the presence of the  
3 jury:)

4 RYAN SNYDER, being duly sworn by the courtroom deputy,  
5 testified:

6 DIRECT EXAMINATION BY MR. ABRAMS:

7 Q Please state your name.

8 A Ryan Snyder.

9 Q Mr. Snyder, where do you reside?

10 A Lee's Summit, Missouri.

11 Q What do you do for a living?

12 A I'm the chief financial officer at Maxus.

13 Q We'll come back to that in a second. Tell us about your  
14 educational background.

15 A Got a degree in accounting from the Harvard of the  
16 Midwest, the University of Missouri, and went to work. Yep.  
17 That's the extent of it.

18 Q Then your work experience, tell us what you have done  
19 professionally.

20 A I'm a CPA and worked in two large public accounting  
21 firms for about 12 years, Arthur Andersen and KPMG. Left  
22 there to be the controller at Hostess Brands. They make  
23 Twinkies and DingDongs and CupCakes and HoHos.

24 I was there a couple years, and then became the  
25 chief financial officer at a nursing college and then left --

573

1 was there two or three years and left there to become the CFO  
2 of Maxus.

3 Q And CPA means?

4 A Certified public accountant.

5 Q Okay. And CFO?

6 A Chief financial officer.

7 Q All right. So tell us briefly what you do as the chief  
8 financial officer at Maxus.

9 A I'm responsible basically for the finance function  
10 generally at Maxus. So I'm responsible for the preparation of  
11 financial statements. I deal with our lenders, our banks, our  
12 risk management, our insurance companies, handle our treasury  
13 management, all that kind of finance stuff.

14 Q Okay. Let's talk about the Metropolitan. I'm not going  
15 to go back through the history because I think we've all heard  
16 it before. We understand phase 6 burned to the ground. There  
17 was no question you had to rebuild that, correct?

18 A That's correct.

19 Q What about phase 5? Was there any discussion about  
20 whether should you just tear phase 5 down and rebuild it or  
21 fix the fire damage? What happened there?

22 A There was. The phase 5 repair was a bit of a  
23 complicated process. The damage to the subfloor, we  
24 ultimately had to hire a structural engineer to help us figure  
25 out how to repair the subfloor. And in that process, there

1 was a lot of discussion -- you remember Mr. Irmiter talked  
2 about the possibility of having to lift the building up and  
3 put the subfloor underneath it? The structural engineer  
4 helped us design a fix that -- so that we didn't have to do  
5 that.

6 But before we were able to get that -- the fix in  
7 place, we did evaluate for quite a while whether it would be  
8 better to just knock the building down and build it from the  
9 ground up again. That whole process took several months.

10 Q And what was involved in that process? Did it take  
11 awhile? Did you have to work with engineers?

12 A Engineers. We hired a structural engineer, and between  
13 Bomasada -- Bomasada was involved in the process and a  
14 structural engineer and others. BCCM may have been involved  
15 as well. I'm not certain.

16 Q And so the final decision was not to tear it down but to  
17 fix the fire damage and go forward?

18 A That's correct.

19 Q All right. And so did you have to -- was there any kind  
20 of communication with the city in order for that to happen,  
21 city of Birmingham?

22 A Yeah. What made it complicated was if we -- it may have  
23 been more efficient -- it may have been more cost effective to  
24 actually knock the building down and build it back again; but  
25 what made it complicated was -- I believe it was Mr. Irmiter

575

1 that mentioned the city building code had changed.

2 So the building was originally constructed under the  
3 2008 building code. If we knocked the building down and  
4 rebuilt it, we had to rebuild it under the 2018 building code.  
5 So if we had done that, we would have had to get new  
6 architectural drawings, new city approvals and probably some  
7 other process-related things that would have taken months.

8 Q Okay. Was that part of the decision to --

9 A It was.

10 Q -- rehabilitate and repair instead of knocking it down?

11 A Yes, it was.

12 Q All right. Let's talk -- let's go to numbers, which is  
13 your specialty.

14 As the chief financial officer at Maxus, did you  
15 track the costs that Maxus incurred for damages related to the  
16 fire?

17 A I did.

18 Q Okay. And did you track these expenses as they were  
19 being incurred?

20 A Yes.

21 Q Okay. And to the best of your knowledge, are the  
22 expenses and damages related information that's been provided,  
23 are those accurate?

24 A Yes.

25 MR. ABRAMS: Can you put up the first line, Melissa?  
576

1 Q (BY MR. ABRAMS) Okay. We've seen this before. Tell us  
2 what this slide represents.

3 A This represents the total fire-related damages separated  
4 between the remediation that we had to do, mostly the smoke  
5 and soot remediation and the fire repairs, the rebuilding of  
6 building 6, and the repairing -- some related to repairing  
7 building 5.

8 Q Okay.

9 MR. ABRAMS: Go to the next slide.

10 Q (BY MR. ABRAMS) All right. Tell us what we're looking  
11 at here.

12 A This is -- shows the total cost that we incurred between  
13 remediation and repairs, and it deducts the amount that  
14 Travelers has paid to date.

15 Q Okay. So just to go through this briefly, Maxus spent  
16 on fire remediation, that's to fix the -- clean the soot and  
17 char, \$17.1 million and -- correct?

18 A Yes.

19 Q The repairs to rebuild 6, rebuild 5, fix all the fire  
20 damages not related to soot and char is \$11.5 million?

21 A That's correct.

22 Q And then you have received some payments from Travelers,  
23 correct?

24 A We've received a little over \$6.1 million.

25 Q So the total amounts that you're claiming for property

1 damage are?

2 A \$22,595,865.

3 Q Okay. And does that take into account any deductibles  
4 that you have to pay?

5 A Yes.

6 MR. ABRAMS: Okay. All right. Let's go to the next  
7 slide, please. And by the way -- can you go back one?

8 Q (BY MR. ABRAMS) So, by the way, we heard yesterday from  
9 Ms. Pienta about business interruption damages. Does this  
10 slide reflect any business interruption damages?

11 A No, it does not.

12 Q Business interruption damages are on top of this amount?

13 A That's correct.

14 Q All right. So how is it that you -- how is it that  
15 these numbers have been calculated?

16 A Well, we track all of these costs as we receive pay  
17 apps. So once we receive a pay app and once we're satisfied  
18 that we're okay to pay the pay app, then we track them. We  
19 just track that cost between, you know, all the different  
20 categories.

21 Q Okay. And in order to come up with these numbers, did  
22 you go through all the invoices and change orders that were  
23 paid?

24 A Every one.

25 Q Okay.



1 MR. ABRAMS: Let's go to the next slide.

2 Q (BY MR. ABRAMS) Tell us what this is, Mr. Snyder.

3 A This is our check register.

4 Q Okay. And what's the significance of that? There's --  
5 it's -- there's a lot of numbers here. Hard to see. Tell us  
6 what a check register is.

7 A This just lists all of the checks that we paid -- all  
8 the checks that were used to pay the construction-related  
9 costs.

10 Q Okay. At the Metropolitan?

11 A At the Metropolitan.

12 Q Okay. And so this one totals -- what's the total on the  
13 bottom?

14 A Well, those are separate checks.

15 Q Okay. So each one, each one of these checks -- why do  
16 you have these subtotals?

17 A Because we often paid multiple pay apps on one check.

18 Q Okay. All right. So what you have here is the check  
19 that was written with which pay apps were -- let's just take  
20 us through one. There's a lot of check registers, but just so  
21 they understand.

22 So the first one that's listed there, this February  
23 6th, 2020.

24 A Yeah. So that was, it looks like, six different pay  
25 apps that we paid on one check, and the total check amount was  
579

1 \$1,907,000.

2 Q Okay. And you list the payment date, correct?

3 A Correct.

4 Q The invoice date?

5 A Correct.

6 Q The invoice number?

7 A Correct.

8 Q The vendor is what? Is that the person -- that's the  
9 company that did the work?

10 A That's correct.

11 Q The amount of the bill?

12 A That's correct.

13 Q Okay. And then what's the difference between amount and  
14 amount applied? They look like they're the same numbers.

15 A They generally are. Sometimes we paid less than the pay  
16 app. So we may have in our accounts payable system, for  
17 example, \$100; but for one reason or another, either we didn't  
18 receive the appropriate support or we were waiting on some  
19 other information, we may have paid less on the pay app. That  
20 happened on a couple of occasions.

21 Q And then the last column, the insurance loss amount,  
22 what is that?

23 A That's the amount that -- I believe that's the amount  
24 that applies to the insurance claim.

25 Q Okay. And the numbers are close to the same?

580

1 A Yes, yes.

2 Q So there's some -- so an instance, though, let's take on  
3 the second group of column from that December 31 payment date.  
4 You have amount applied, \$229,579. Do you see that?

5 A I'm sorry?

6 Q So in the second grouping of checks.

7 A Yes, I see that.

8 Q Okay. But then the insurance loss is less, right?

9 A That's correct.

10 Q Okay. And why is that?

11 A That's because some of it related to either -- other  
12 construction costs, not related to the insurance claim.

13 Q So, for instance, if it was construction defect, it  
14 wouldn't be in that column?

15 A That's correct.

16 Q Okay.

17 MR. ABRAMS: Can we go to the next slide, please?

18 A Can I correct something real quick?

19 Q (BY MR. ABRAMS) Yes.

20 A I think we have this in another format as well. This  
21 looks like it is not separated by check. This is separated a  
22 different way. So you can see that the payment date on the  
23 top line, 2/6/2020, those were all different payment dates. I  
24 misspoke when I said these were all individual payments.

25 Q Okay. But nevertheless, all these payments -- these all  
581

1 represent checks that were actually written by Maxus to pay  
2 for these damages?

3 A Yes, they do.

4 Q Okay.

5 MR. ABRAMS: Can you go to the next slide, please?

6 Q (BY MR. ABRAMS) And, again, another check register or  
7 portion of the check register, what is this representing?

8 A The same thing. Payments made to various vendors  
9 related to the reconstruction effort.

10 Q Let's walk through the very first one. You've got a  
11 payment date of August 20, 2020. That's when you made it.  
12 Almost three years ago, correct?

13 A That's correct. We made the payment on August 20th  
14 to -- in this case, we paid it directly to one of Bomasada's  
15 subs, Essayon. We paid them directly.

16 Q And when we say "subs," you mean a subcontractor?

17 A That's correct.

18 Q And it has the amount?

19 A Yes, it does. \$295,603.

20 Q And this is that amount, the full amount of that was --  
21 is being sought from Maxus, correct -- I'm sorry. Being  
22 sought from Travelers, correct?

23 A Yes.

24 Q We have -- let's take an example on this check register.  
25 If you can see the one for May 20, 2020, the H2K Construction,  
582

1 do you see that? It's about more than halfway down the page.

2 A I do. Yes, I see it.

3 Q Okay. So that one, that was a payment that Maxus made  
4 to a subcontractor for \$84,132, correct?

5 A That's correct.

6 Q All right. And how much is being sought from Travelers  
7 for that check?

8 A Zero.

9 Q Okay. Why is that?

10 A Because it wasn't related to the fire claim.

11 Q Okay. So it could be, for instance, a construction  
12 defect?

13 A Correct.

14 MR. ABRAMS: Can we go to the next page.

15 Q (BY MR. ABRAMS) All right. What are we seeing here?

16 A It's just a continuation of the check registry.

17 Q So these are more checks that Maxus paid to remediate  
18 the claim to repair?

19 A That's correct.

20 Q All right. Let's just look at the first one that -- to  
21 BCCM Construction. It's a -- tell us what that is. Tell us  
22 the payment date.

23 A That one was paid on November 9th, 2019.

24 Q Okay.

25 A It was Pay App No. 1.  
583

1 Q Okay. So Maxus came out of pocket for that. How much  
2 was that?

3 A \$600,000.

4 Q Okay. And that was paid way back in November of 2019?

5 A That's correct.

6 Q Okay.

7 MR. ABRAMS: Let's go to the next slide.

8 Q (BY MR. ABRAMS) What are we seeing here?

9 A Just a continuation of the check registry.

10 Q Okay. And, again, the next one, what are we seeing  
11 here?

12 A Same thing; continuation of the check registry.

13 Q Okay. The next one?

14 A Just another continuation of the check registry.

15 Q Okay. These are all checks written by Maxus for repair  
16 or remediation of the Metropolitan. Some are construction  
17 defects, some are not?

18 A Correct.

19 Q All right. Next page.

20 A Again, just another page of the check registry.

21 Q All right. And again?

22 A Another page from the check registry.

23 Q Okay. And the final one. All right. What do we see  
24 here?

25 A This is the -- what looks to me to be the final page of  
584

1 the check register totaling -- that shows the total amount  
2 paid and the total amount that we're claiming in the -- for  
3 insurance damages.

4 Q Okay. And so the total checks, if you go down there,  
5 it's actually forty-five million thirty -- more than \$45  
6 million, correct?

7 A That's correct.

8 Q You're not seeking all those amounts from Travelers,  
9 correct?

10 A No, we are not.

11 Q Okay. So it has the amounts that you're seeking from  
12 Travelers totals up all the checks that were written down at  
13 the bottom southeast corner of this page?

14 A Yes, it does.

15 Q All right.

16 MR. ABRAMS: Let's go to the next slide, please.

17 Q (BY MR. ABRAMS) And what are we looking at here?

18 A This is one of the checks that was listed on the check  
19 registry.

20 Q This is just an example of what it looks like?

21 A Yes.

22 Q And so when you send a check -- this check went to BCCM,  
23 correct?

24 A Yes, it did.

25 Q And this is one that was sent in March of 2022, correct?

585

1 A Yes.

2 Q And so when you -- on the check stub -- what's on top?

3 A That's a stub that is printed out that shows exactly  
4 which pay apps were paid.

5 Q Okay. So when Maxus writes a check to its payees, does  
6 it always explain what the check's for?

7 A It does, yes.

8 Q And in this one, it explains like, for instance, on the  
9 check stub, it says BCCM. Tell us what this -- that first  
10 one, what does that reference?

11 A That represents, appears to me, Pay App No. 27 on BCCM's  
12 contract for the remediation in phases 1 through 4.

13 Q And then it gives the amount in this example of \$73,000?

14 A Yes.

15 Q Okay. Why is it important -- or is it important as the  
16 Maxus CFO, when you write a check to a vendor, why is it  
17 important or is it important that you explain what you're  
18 paying for?

19 A Yeah. I mean, the -- it is important.

20 Q And why is it important?

21 A Well, so we don't -- it's important to us to know what  
22 we're paying for, and it's important for our vendor to know  
23 what they're receiving so we can make sure that everything  
24 that's due is paid and everything that they are due is  
25 received.



1 Q Okay.

2 MR. ABRAMS: Let's go to the next one, please.

3 Q (BY MR. ABRAMS) All right. We talked about business  
4 interruption, and Ms. Pienta talked about this yesterday. Can  
5 you tell us what this slide represents?

6 A Yeah. This is the amount of total business interruption  
7 through, I believe, January of 2021.

8 Q Okay. And let's -- walk it through with us. So it says  
9 "lost rental income," and there's an asterisk there. Do you  
10 see that?

11 A I do.

12 Q Tell us what that means.

13 A The asterisk indicates that the lost rental income was  
14 calculated from October 6th, 2020, through the restoration  
15 period, which we ended on January -- in January 2021.

16 Q Okay. And then what's the next piece of that?

17 A That's additional expenses that we incurred related  
18 to -- primarily related to moving tenants out and certain  
19 other costs that we incurred related to the fire damage.

20 Q Are those things that you believe are covered under the  
21 business interruption portion of the policy?

22 A Yes.

23 Q So we've got a total incurred?

24 A Yes.

25 Q And then there was some payments from Travelers?

587

1 A There were. Travelers paid a total of about \$865,000  
2 under this portion of the policy. Bomasada received directly  
3 approximately \$450,000 for certain costs that they'd incurred  
4 relating to reworking contracts and so on after the fire  
5 happened. We received a little over \$415,000.

6 Q So I want to make sure that we understand this. So if  
7 you -- on the business interruption, if you had continued to  
8 calculate the business interruption, would the number be --  
9 for lost rental income be even more than the \$7.5 million?

10 A Millions more, yes.

11 Q But you cut it off. Why did you cut it off?

12 A Because we exceeded the limit.

13 Q And the limit was 5.1 million?

14 A That's correct.

15 Q So was the point why keep counting if you've exceeded  
16 the limit?

17 A That's correct.

18 Q So the amount that you -- that Maxus is claiming from  
19 Travelers for business interruption damages is how much?

20 A \$4,234,399.

21 Q If there wasn't a limit under the policy, would the  
22 claim be for more?

23 A It would be, yes.

24 Q Okay. Significantly more?

25 A Millions more.

1 Q Okay.

2 MR. ABRAMS: We'll pass the witness, Your Honor.  
3 Thank you, Mr. Snyder.

4 CROSS-EXAMINATION BY MR. HAMANN:

5 Q Morning.

6 A Good morning.

7 Q I have a few questions to ask you, Mr. Snyder.

8 I see these tabulations calculating what's been  
9 spent. Did you prepare those tabulations yourself?

10 A I did not personally, no.

11 Q Okay. Thank you.

12 I wanted to ask you about rent rolls. I take it in  
13 your position as CFO, you have occasion to analyze rent rolls?

14 A I do.

15 MR. HAMANN: Let's show Defendant's Exhibit 435,  
16 please.

17 Q (BY MR. HAMANN) Mr. Snyder, can you identify that as the  
18 rent roll for the Maxus property the Metropolitan as of  
19 September 30, 2018?

20 A Yes.

21 Q Okay. Now, does the rent roll just show the status of  
22 all the units of the Metropolitan; for example, whether  
23 they're occupied or not, by whom, and what kind of amount is  
24 being received in the way of rent?

25 A Yes, it does.

1 Q Okay. Now, if we look at Exhibit 435, the rent roll for  
2 the end of September 2018, am I correct that of all the units  
3 in the Metropolitan, 18 of them, were occupied?

4 A I can't tell from this sheet, but that -- my  
5 recollection is at the time of the fire, there were 17 units  
6 occupied, but it could have been 18.

7 Q Okay. And as we see here, this is as of September 30,  
8 2018. The fire took place on September 27th?

9 A That's correct.

10 Q Okay. So whether it's 17 or 18, we've got at least a  
11 very close ballpark?

12 A That's correct.

13 Q Okay. Now, there was a period, of course, after the  
14 fire when the tenants had to be moved out?

15 A Correct.

16 Q Okay. And then they -- they returned, and Maxus  
17 continued its effort to lease the units in the Metropolitan,  
18 those that were ready?

19 A That's correct.

20 Q Okay. Let me show you what is marked Defendant's  
21 Exhibit 438.

22 Now, this is a rent roll detail similar to the  
23 earlier one for Exhibit 435. This time it's for June 27,  
24 2019, correct?

25 A That's correct.

1 Q Okay. Now, this will also show, won't it, the status of  
2 occupancy at the Metropolitan as of the 27th of June?

3 A Yes, it will.

4 Q Okay. So if we look at this first page here, we see  
5 that we have the very first one, unit 101, that the tenant was  
6 moved in, correct, at May 20, 2019?

7 A Yes, that's correct.

8 Q So as of May 20, 2019, this individual moved into the  
9 Metropolitan?

10 A It appears to be, yes.

11 Q Okay. And then if we move down this page to unit 117,  
12 we see, don't we, that this unit had a tenant with a move-in  
13 date of June 13, 2019?

14 A That's correct.

15 Q Okay. If we move farther down the page, we see at the  
16 bottom a tenant whose move-in date was May 2, 2019?

17 A That's correct.

18 Q Okay. And these dates correspond within the -- with  
19 when the leases started?

20 A They should, yes.

21 Q Okay. So we move on to the next page. We see, don't  
22 we, near the top of unit 123, Maxus has leased it and its  
23 move-in date for that unit is June 1, 2019, correct?

24 A That's correct.

25 Q Okay. Then unit 124, just moving down the list, Maxus  
591

1 has got that leased and its -- the move-in date is May 31?

2 A Correct.

3 Q Okay. Moving farther down, Maxus has leased unit 127.  
4 The move-in date for the tenant is May 6, 2019?

5 A That's correct.

6 Q Then farther down, unit 130, similarly, the tenant's  
7 move-in date is May 16, 2019?

8 A That's correct.

9 Q Okay. If we go further on the next page, unit 204, you  
10 have it becoming occupied and the move-in date, the lease  
11 start, is May 31, 2019?

12 A Yes.

13 Q Okay. And then for unit 205, the lease begins and the  
14 move-in date is May 25, 2019?

15 A Yes, it is.

16 Q For unit 208, the move-in date and the lease started May  
17 27th, 2019?

18 A Yes, it did.

19 Q All right. Unit 209, lease started, tenant moved in May  
20 10, 2019?

21 A Yes.

22 Q And you go down to unit 210, move-in date, lease started  
23 May 31, 2019?

24 A Correct.

25 Q And then moving down, you look at unit 212, you see the  
592

1 lease started, the tenant moved in on May 31, 2019?

2 A Correct.

3 Q All right. Unit 213, the tenant moved in and the lease  
4 was started on May 20, 2019?

5 A Correct.

6 Q Okay. Turning to the next page, you see a tenant moving  
7 into unit 306, moving in on May 28, 2019?

8 A I'm sorry. Which one?

9 Q This unit 306.

10 A Yeah. I see it now.

11 Q Okay. And the move-in date on that -- for that unit was  
12 May 28, 2019?

13 A Correct.

14 Q This means this is the date when these tenants are --  
15 who have leased the apartment are actually moving in?

16 A Well, it's the date that they can move in. Sometimes it  
17 happens after that date; but, yes.

18 Q Maxus is permitting these tenants to move in at least as  
19 of that date?

20 A That's correct.

21 Q We move further down on this page to unit 313, and we  
22 see, don't we, that on May 31, 2019, the move-in date for that  
23 unit, that being 313, was May 31, 2019?

24 A I do. I see that, yes.

25 Q Okay. Let's go to the next page. We're still on the  
593

1 rent roll for this date of June 27, 2019, correct?

2 A Correct.

3 Q And we see for unit 315, the tenant move-in date was May  
4 24, 2019?

5 A That's correct.

6 Q And then for unit 316 -- excuse me -- 317, the move-in  
7 date for the tenant was May 31, 2019?

8 A That's correct.

9 Q Going down near the bottom of the page, we see for the  
10 unit 328, the move-in date for the tenant for that unit was  
11 May 23, 2019?

12 A That looks to be the case. I'm not sure what the second  
13 date is below that.

14 Q Okay.

15 A But it appears to be -- the lease start date appears to  
16 be May 23rd. I don't know what the significance of June 27th  
17 is.

18 Q I understand. Turning to the next page, let's look at  
19 unit 330. Does your rent roll, the Maxus rent roll show that  
20 the move-in date for the tenant leasing 330 was May 21, 2019?

21 A It does.

22 Q And then moving down the page for unit 402, does the  
23 rent roll of Maxus show that the tenant was allowed to move in  
24 May 22, 2019?

25 A It does.



1 Q Let's go to the next page. The rent roll for unit 412,  
2 does it show a move-in date of May 8, 2019?

3 A Yes, it does.

4 Q And then moving down to unit 413, does your rent roll --  
5 I should say the rent roll of Maxus show the tenant was  
6 allowed to move in on June 6th, 2019?

7 A Yes, it does.

8 Q Moving farther down the page to unit 422, does that show  
9 that the tenant from 422 was permitted to move in as of June  
10 12, 2019?

11 A Yes.

12 Q So the rent rolls shown in Exhibit 438 show Maxus was  
13 permitting tenants to move into the Metropolitan?

14 A Yes, that's correct.

15 Q Now, I want to ask you a couple of questions relating to  
16 some dates here.

17 Do I understand -- at some point I understand  
18 Bomasada was the contractor on the job?

19 A That's correct.

20 Q It later became replaced?

21 A Bomasada was the general contractor that built the  
22 complex. We ultimately -- they were -- we signed a contract  
23 with them to rebuild phase 6. We signed a contract with BCCM  
24 to do the remediation work. And then we, a few months, later  
25 replaced Bomasada with BCCM to do the rebuild of phase 6. So

595

1 ultimately BCCM finished the project.

2 Q Now, there were discussions, weren't there, we've talked  
3 about them some in this case, surrounding the decision of  
4 Maxus to evict the tenants?

5 A Yes.

6 Q Okay. Now, am I right in understanding that June 24,  
7 2019, Maxus advised Bomasada to stop work on the project?

8 A I don't know the date, but we did advise Bomasada to  
9 stop at some point.

10 Q Okay. Let me see if this refreshes your recollection.  
11 This is an email. It says from Alex Stehl to Stuart Fred.

12 Now, Stuart Fred was kind of the head guy at  
13 Bomasada?

14 A He was one of the principals there, yes.

15 Q And I'm going to ask you to take a look at this email  
16 and see whether it refreshes your recollection as to the fact  
17 that Maxus told Bomasada to stop work and when that was.

18 A Well, this is dated June 14th.

19 Q Right. Having looked at that, does that refresh your  
20 recollection as to when Maxus told Bomasada to stop work on  
21 the project?

22 A It does.

23 Q And what date was that?

24 A June 14th, 2019.

25 Q Okay. Thank you.

1           And pursuant to that instruction, is it your  
2 understanding that Bomasada indeed stopped work on the project  
3 at that time?

4       A     I believe they did, yes.

5       Q     Okay. Now, at a later date, did the contract  
6 relationship between Bomasada and Maxus terminate?

7       A     Yes, it did.

8       Q     Okay. And did Maxus indicate June 5, 2020, that --  
9 strike that.

10           Had Maxus received a letter in early June of 2020  
11 from Bomasada advising that Bomasada was stopping work on the  
12 contract?

13       A     There were a lot of letters flying around, but we did  
14 receive a letter from Bomasada of that nature, yes.

15       Q     Okay.

16           MR. ABRAMS: Your Honor, can we approach?

17           (Counsel approached the bench and the following  
18 proceedings were had:)

19           MR. ABRAMS: Your Honor, my only concern is, is that  
20 you ruled on a motion in limine that we're not going to get  
21 into the disputes between Maxus and Bomasada. You know --

22           THE COURT: I don't know. What is it that he wants  
23 to offer?

24           MR. ABRAMS: What's that?

25           THE COURT: What is it he wants to offer?

1 MR. ABRAMS: Well, that's a good point. I'm not  
2 sure.

3 MR. HAMANN: What I need to do is just refresh his  
4 recollection that as of early June of 2020, Bomasada stopped  
5 work.

6 MR. ABRAMS: That's fine. We don't have an  
7 objection to that.

8 What I don't want to do is get into the whole  
9 dispute with Bomasada. Clearly they were fired. Clearly we  
10 told them to stop work because we were in remediation. That's  
11 fine. Beyond that I think it's --

12 THE COURT: Right.

13 MR. ELY: We agree.

14 MR. HAMANN: Yes.

15 (The proceedings returned to open court.)

16 Q (BY MR. HAMANN) Mr. Snyder, let me hand you this  
17 document. It looks to be a letter from an attorney at Lathrop  
18 GPM to Jason Johns and -- would you take a look at that and  
19 see if it refreshes your recollection as to when Bomasada  
20 determined it was going to stop work on the project?

21 A It appears to be June 4th, 2020.

22 Q Okay. Does that correspond with your recollection now  
23 that you're refreshed?

24 A Yes.

25 Q Okay. Thank you.

1           Now, there's something I'm unclear about with  
2     respect to Maxus, the plaintiff; that is to say, Maxus  
3     Metropolitan.

4           Am I right that the plaintiff Maxus Metropolitan is  
5     comprised of what; that is to say, are there entities and  
6     individuals that comprise that entity?

7     A     There are entities and individuals that own that entity,  
8     yes.

9     Q     Okay. So with respect to Maxus Metropolitan, is it  
10    owned by an entity called Maxus Opportunity Fund?

11    A     That's more precise. The owner of Maxus Metropolitan is  
12    actually Maxus Opportunity Fund 1. There are individual and  
13    entities that own Maxus Opportunity Fund 1, but Maxus  
14    Metropolitan also has two additional owners that are not in  
15    Maxus Opportunity Fund 1 that are separate entities.

16           So Maxus Metropolitan is owned approximately 36  
17    percent by Maxus Realty Trust, Inc., two separate entities  
18    with Maxus Realty Trust, Inc., and 64 percent by Maxus  
19    Opportunity Fund 1.

20    Q     You said Maxus Realty Trust?

21    A     Correct.

22    Q     And what is Maxus Realty Trust?

23    A     That's our real estate investment trust. That's the  
24    vehicle that -- through which most of our apartments are  
25    owned.

1 Q And can you just educate me on what a real estate  
2 investment trust is here? That is to say, do they have  
3 different characteristics in different circumstances?

4 A It's more a tax designation. It -- it's a -- it  
5 primarily determines how we're treated under the tax law, and  
6 it's specific to real estate. It's designed to be an entity  
7 that holds entities that earn passive income like rent.

8 Q So it's supposed to have attractive investment features?

9 A Yes.

10 Q That form?

11 A Yes. It has certain tax features, yes.

12 Q That are hopefully attractive to potential investors?

13 A They can be, yes.

14 Q I see. I was going to ask you also, were you involved  
15 in the process of separating out the fire damage costs that  
16 Maxus claims and the construction defect costs Maxus claims?

17 A I was.

18 Q How was -- what did you do?

19 A Well, I directed the effort. We had a forensic  
20 accountant outside of Maxus that prepared -- those schedules  
21 that we looked at earlier, I believe they were prepared by a  
22 forensic accountant, and then our -- all of the information  
23 was provided by our staff to him and his staff. We reviewed  
24 those schedules many times.

25 Q Who was the forensic accountant?

1       A       His name was Kris Zeid from RubinBrown.  Z-i-e-d, I  
2 think.  Not sure of the I before E.

3       Q       Now, let me ask you:  Speaking of your own background  
4 and experience, would you agree that you don't have any  
5 expertise in determining cause of damage to buildings?

6       A       That's correct.

7       Q       In this case, did Maxus rely on Mr. Irmiter for that?

8       A       Yes.

9       Q       Now, a similar question, Mr. Snyder, were you involved  
10 in any allocation of business income losses that are claimed  
11 between fire damage and construction defect?

12      A       No.

13      Q       Do you know of anyone who was asked to make that  
14 differentiation?

15      A       No.

16      Q       In your capacity as chief financial officer, would you  
17 have close oversight over the checks that went out from Maxus  
18 to pay various entities?

19      A       Yes.

20      Q       So let me ask you with respect -- you've been here to  
21 hear something about Safety Environmental, SELC?

22      A       I'm sorry.  Can you repeat?

23      Q       My question, sir, is this:  Did Maxus pay Brad Stiles'  
24 environmental company, Safety Environmental, for its work in  
25 April of 2019?

1       A       I don't know. If he invoiced us and did the work, we  
2       likely paid it, but I don't know for sure if we paid that or  
3       not.

4       Q       Okay. I wanted to also ask you, we heard something from  
5       Mr. Irmiter the past several days, a lot of things actually.

6               Is it fair to say Mr. Irmiter wore different hats  
7       during his activity at the Metropolitan?

8       A       Yes, he did.

9       Q       And speaking as the chief financial officer of Maxus,  
10       can you tell us in a ballpark manner the total amount of money  
11       that Maxus paid Mr. Irmiter for the various hats he wore at  
12       the Metropolitan?

13       A       I'd have to look. Off the top of my head, I don't know.  
14       It was a sizeable amount, though.

15       Q       I understand that. Sizeable means different things to  
16       different people. So let me ask you, was it -- do you think  
17       it was more than \$500,000?

18       A       I don't think so. Mr. Irmiter said \$400,000. I believe  
19       it was slightly less than that the last time I looked.

20       Q       And that was from all of his activity?

21       A       Yes.

22       Q       Let me show you Defendant's Exhibit 225.

23               Mr. Snyder, can you identify that as a subcontract  
24       agreement that was dated January 2020 between Bomasada and an  
25       entity called Resource Construction?



1 A It appears to be, yes.

2 Q Okay. So would that date, January 2020, if you look at  
3 the last page, page 14, you see signatures and dates. And one  
4 signature for Bomasada is January 21, 2020. The signature for  
5 Resource Construction is January 17, 2020.

6 But in any event, we can agree, can't we, that  
7 period would mark the time when Resource Construction  
8 commenced work at the Metropolitan?

9 A It appears to be, yes.

10 Q Now, did Maxus enter into a contract with BCCM?

11 A Yes.

12 Q And was that contract entered in, what, September,  
13 October of 2019?

14 A Which contract?

15 Q I think probably the first one. Does that ring a bell?

16 A We have multiple contracts with BCCM on this. We --  
17 it's possible we entered a contract with BCCM in October of  
18 2019.

19 Q Okay. Let me show you Defendant's Exhibit 403, and if  
20 you'll turn to the next page.

21 Can you identify that page as being the first page  
22 of a pay application?

23 A That appears to be the first page of a BCCM pay  
24 application, yes.

25 Q And this is a Pay Application No. 1?

1 A Yes.

2 Q And the date on it is for a period to September 30,  
3 2020?

4 A Correct.

5 Q So can we infer from that that BCCM was probably on the  
6 job working just prior to the date of that pay application?

7 A I'd have to -- I don't know what the details are, but it  
8 appeared -- I don't know what the details of the \$88,000 are  
9 without seeing the underlying support, but it appears that  
10 they were on site either then or right around that time, yes.

11 Q Right. And this is the first pay application too?

12 A That's correct. So it could have been that we were  
13 advancing money to get -- for staging and things like that.

14 Q And as you point out, the -- on Line No. 4, it says the  
15 total completed and stored to date was \$88,988.33, correct?

16 A Yes.

17 Q Does that suggest that this first pay app for an amount  
18 of \$89,000 on this project shows this is the beginning of the  
19 project?

20 A This is the beginning of BCCM's involvement in the  
21 project, yes.

22 Q Exactly. That's what I mean.

23 I take it in your position as chief financial  
24 officer, you work closely with Mr. Johnson?

25 A I do.

1 Q On a daily basis?

2 A Every day.

3 Q Had Mr. Johnson instructed Maxus' people to be  
4 transparent with Travelers?

5 A Absolutely.

6 MR. HAMANN: That's all I have. Thank you.

7 MR. ABRAMS: Your Honor, brief redirect? Thank you.

8 REDIRECT EXAMINATION BY MR. ABRAMS:

9 Q Mr. Snyder, let's talk about dates here. There's a lot  
10 of dates you were asked about. Let's talk about some dates.

11 MR. ABRAMS: Melissa, will you put up Plaintiff's  
12 Exhibit 311.

13 Q (BY MR. ABRAMS) This is a letter from Travelers' lawyer  
14 to me, June 12th, 2019, correct?

15 A Yes.

16 Q And this is the letter in which Travelers says it has  
17 not undertaken and will not undertake any technical,  
18 feasibility, safety, or other review of the reports of  
19 Mr. Irmiter. Therefore, Travelers does not take a position  
20 regarding the alleged necessity of instructing residents to  
21 vacate the premises, correct?

22 A Yes.

23 Q June 12th, 2019, correct?

24 A Yes.

25 MR. ABRAMS: All right. Melissa, will you put up  
605

1 the Plaintiff's Exhibit 313.

2 Q (BY MR. ABRAMS) What is this, Mr. Snyder?

3 A This is a letter we sent to our residents notifying them  
4 that we needed to get the building cleared.

5 Q And what -- and to vacate, correct?

6 A Yes.

7 Q And what's the date of that one?

8 A June 14th, 2019.

9 Q Two days later?

10 A Yes.

11 Q Okay. Now, you saw -- counsel went through with you  
12 when people moved in and so on. It's true that one resident  
13 actually moved in the day before he got this letter, right?

14 A Possibly. His lease -- his or her lease started that  
15 day, yes.

16 Q Lease started that day, and the very next day, he gets a  
17 letter saying you've got to vacate?

18 A That's correct.

19 Q And you told all of the tenants -- did you tell all the  
20 tenants that they had to vacate at the same time, or did you  
21 tell people at different times?

22 A We told them all at the same time.

23 Q Okay. You told them through this letter?

24 A Correct.

25 MR. ABRAMS: Will you put back up the check stub we  
606

1 were looking at.

2 Q (BY MR. ABRAMS) Got some questions about checks. This  
3 is -- this was an example of a check -- we went through this  
4 in direct -- that you wrote to BCCM in March of 2022, correct?

5 A That's correct.

6 Q And we talked about the paystub, and you explained why  
7 it was important to put on the paystub, not only for your own  
8 records, but as a courtesy to who you're writing a check to,  
9 of what you're paying for, correct?

10 A That's correct.

11 Q When you got checks from Travelers, did it indicate what  
12 they were paying for?

13 A No.

14 Q Was there anything on the paystub of what they were  
15 paying for?

16 A To my recollection, no.

17 MR. ABRAMS: No further questions.

18 MR. HAMANN: Just a couple questions, please, Your  
19 Honor.

20 RECROSS-EXAMINATION BY MR. HAMANN:

21 Q Who is Resource Construction?

22 A I believe it was one of the subcontractors used in the  
23 rebuild or remediation. I'm not sure.

24 Q Was that at phase 5?

25 A I don't know.

1 Q The phase 5 remediation contract --

2 MR. ABRAMS: Your Honor, what does this have to do  
3 with redirect?

4 MR. HAMANN: I've got one question to go.

5 THE COURT: No questions?

6 MR. HAMANN: Just this one, that's all.

7 THE COURT: I'll hear it.

8 Q (BY MR. HAMANN) If the phase 5 remediation contract was  
9 January 17th, 2021, is that the date that Maxus began  
10 remediation of phase 5?

11 A Repeat the question, please.

12 Q If the phase 5 -- if the contract for phase 5  
13 remediation was January 17, 2021, was that the date when Maxus  
14 began remediation of phase 5?

15 A If that's the date of the contract and that contract was  
16 for the remediation of phase 5, that would make sense. But I  
17 don't know that to be certain.

18 MR. HAMANN: That's all I have. Thank you.

19 MR. ABRAMS: No questions, Your Honor.

20 THE COURT: Thank you.

21 (Counsel approached the bench and the following  
22 proceedings were had:)

23 MR. ABRAMS: So, Your Honor, that's what we had for  
24 the day.

25 THE COURT: We could have taken the day off.  
608

1           MR. ELY: We didn't know that was going to go that  
2 quick, Your Honor. I apologize.

3           THE COURT: That's all you've got for the day?

4           MR. ELY: Yes, sir.

5           MR. ABRAMS: So defendant starts -- we have one  
6 witness we are taking out of order, and then defendants starts  
7 on Monday.

8           THE COURT: What witness are you going to have  
9 Monday?

10          MR. ELY: On Monday, Dr. Robert Schroeder, Chris  
11 Spicer we anticipated calling and perhaps the Travelers'  
12 witness, depending on how that goes. That's what I'm  
13 anticipating, Your Honor.

14          THE COURT: Before you leave, get with -- Patricia?  
15 I'm asking that they meet with you about the  
16 witnesses that we're going to have next week. Quite frankly,  
17 I don't want to waste the jury's time to have them waiting  
18 here.

19          MR. ELY: No, sir. I looked at it last night and  
20 tried to do some time allocations, Your Honor. I think we  
21 will be done by Wednesday or with our part by Wednesday  
22 midday. That's my hope.

23          MR. ABRAMS: And then we have -- there are three  
24 rebuttal witnesses. They should be --

25          MR. ELY: We can handle those that day.

1 MR. ABRAMS: You think so?

2 MR. ELY: I think so.

3 THE COURT: Why don't you guys continue to decide  
4 this. I'd like to know everything today and be done by  
5 Wednesday.

6 MR. ABRAMS: We'll try to go fast.

7 MR. ELY: We'll get together and see what we can do,  
8 Your Honor. Thank you.

9 (The proceedings returned to open court.)

10 THE COURT: Thank you. We're done. I feel maybe we  
11 could have done this yesterday and had the day off today, but  
12 we and they still have some things they need to do. We just  
13 don't need you to be here for that. For the inconvenience to  
14 you, I apologize, but trials are like potholes in the road.  
15 You see one, you hit it; and you don't see one, and you hit it  
16 anyway.

17 So, again, it's important because you're going to be  
18 gone over the weekend. Ask that you report back on Monday at  
19 8:30. We'll get started. And I've been promised we'll have  
20 continuous witnesses through Wednesday, and we're looking  
21 forward to submitting the case on Thursday.

22 So we're still ahead of the curve here, if you will.

23 Any questions?

24 All right. Please read that instruction on your way  
25 out of the jury room. It's very important since we're going

610



1 to have this big gap in here and people coming up to you and  
2 saying what you been doing in court and yada, yada, yada, and  
3 you've got to say mum is the word, all right?

4 Have a good weekend. Thank you.

5 (The following proceedings were had out of the  
6 presence of the jury:)

7 THE COURT: Anything else we need to discuss?

8 MR. ELY: No, sir.

9 THE COURT: Get it tight.

10 MR. ELY: I understand, yes, sir.

11 Your Honor, I do have one question. I'm sorry.  
12 Mike is -- you're calling Jason next week?

13 MR. ABRAMS: Maybe. Depending on the time.  
14 Possibly, although if we think we've got -- covered it in  
15 other ways and we're trying to get it done, maybe we don't  
16 call him.

17 MR. ELY: All I want to make sure is since they  
18 haven't rested today, that I have an opportunity for a Rule 50  
19 motion because the case is not closed at this point. If it  
20 becomes closed, then we'll have a Rule 50 motion at that time.  
21 I just wanted to advise the court that's what we plan on doing  
22 next week.

23 THE COURT: We'll take it up.

24 MR. ABRAMS: No objections.

25 (Court adjourned.)  
611

REPORTER'S CERTIFICATE

I certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

\_\_\_\_\_  
Date

\_\_\_\_\_  
/s/Gayle M. Wambolt  
GAYLE M. WAMBOLT, CRR, RMR  
United States Court Reporter